

Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all allegations of material fact stated in the complaint, and the court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

II. Amended Complaint (Docket #14)

Plaintiff names the following defendants in the amended complaint: Nevada Department of Corrections (NDOC) Director Howard Skolnik; NDOC Medical Director Bruce Bannister; NDOC physician Karan Gedney; NDOC physician Marsha Johns; NDOC physician John Perry; Deputy Attorney General Clark Leslie; and correctional officers Rameriz, Fournier, Krabbenhoff, Wiley, Lewis, and Murvuia.

Count I

Plaintiff begins his amended complaint by stating that he was diagnosed with hepatitis C in 1995, and that he has never received treatment for his disease. Plaintiff asserts an Eighth Amendment claim in Count I of the amended complaint. Plaintiff alleges that defendant Howard Skolnik entered into a

1 contract with a private company to provide medical care to inmates within the Nevada Department of
2 Corrections, and that defendant Bruce Bannister created a utilization panel to oversee this project.
3 Plaintiff alleges that the members of the utilization panel make decisions on which inmates receive
4 treatment and which inmates do not. Plaintiff alleges that the members of the utilization panel are Drs.
5 Karan Gedney, Marsha Jones, John Perry, NDOC Medical Director Bruce Bannister, and NDOC
6 Director Howard Skolnik. Plaintiff alleges that the panel has engaged in a policy, practice, and custom
7 of failing to treat inmates with hepatitis C, and that this policy has caused irreparable injury to plaintiff's
8 liver. (Am. Compl., at p. 6).

9 Plaintiff alleges that, under the policy and practice that exists, it is a "waste of time" for inmates
10 with hepatitis C to request treatment by a liver specialist. Plaintiff alleges to have requested to see a
11 liver specialist at his annual check-up on March 26, 2009, to no avail. (Am. Compl., at p. 7). Plaintiff
12 also complains that he has not received treatment for a nail fungus and diarrhea, and that he has
13 symptoms including drowsiness, loss of appetite, and irritability. Plaintiff alleges that he has been given
14 ibuprofen by medical staff on numerous occasions, but he has not been warned that ibuprofen can cause
15 severe liver damage. Plaintiff further alleges that the failure to treat his hepatitis C may lead to cirrhosis
16 of the liver, and exposes him to a greater risk of pneumonia, esophageal problems, candidiasis,
17 salmonella, wasting syndrome, cirrhosis, and liver cancer, and other serious medical conditions. (Am.
18 Compl., at p. 7).

19 A prisoner's claim of inadequate medical treatment does not constitute cruel and unusual
20 punishment unless the mistreatment rises to the level of "deliberate indifference to serious medical
21 needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The "deliberate indifference" standard involves
22 an objective and a subjective prong. First, the alleged deprivation must be, in objective terms,
23 "sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S.
24 294, 298 (1991)). Second, the prison official must act with a "sufficiently culpable state of mind," which
25 entails more than mere negligence, but less than conduct undertaken for the very purpose of causing
26 harm. *Farmer v. Brennan*, 511 U.S. at 837. A prison official does not act in a deliberately indifferent

1 manner unless the official “knows of and disregards an excessive risk to inmate health or safety.” *Id.*

2 Plaintiff states a cognizable Eighth Amendment claim for deliberate indifference to medical
3 needs based on the alleged policy, custom, and practice of failing to treat inmates for hepatitis C. *See*
4 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Count I will be allowed to proceed against defendant Drs.
5 Karan Gedney, Marsha Jones, John Perry, Nevada Department of Corrections Medical Director Bruce
6 Bannister, and Nevada Department of Corrections Director Howard Skolnik.

7 **Count II**

8 Plaintiff alleges that the defendants named in Count I have engaged in a “civil conspiracy” to
9 violate plaintiff’s right to “equal treatment under the law.” (Am. Compl., at p. 8). Plaintiff repeats the
10 allegations contained in Count I of the amended complaint, regarding defendants’ failure to treat his
11 hepatitis C. (*Id.*).

12 It appears that plaintiff is asserting a claim under 42 U.S.C. § 1985(3) for conspiracy to violate
13 a person’s equal protection rights. A claim for relief under 42 U.S.C. § 1985 requires: (1) a conspiracy,
14 (2) to deprive any person or a class of persons of the equal protection of the laws, or of equal privileges
15 and immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy,
16 and (4) a personal injury, property damage or a deprivation of any right of privilege of a citizen of the
17 United States. *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980) (citation omitted); *see also Sever*
18 *v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). “The language requiring intent to deprive
19 of equal protection . . . means that there must be some racial, or perhaps otherwise class-based,
20 invidiously discriminatory animus behind the conspirators’ action.” *Griffin*, 403 U.S. 88, 102 (1971).
21 The Ninth Circuit has extended § 1985(3) “beyond race only when the class in question can show that
22 there has been a governmental determination that its members require and warrant special federal
23 assistance in protecting their civil rights.” *Sever*, 978 F.2d at 1536 (citation omitted).

24 In the instant case, plaintiff fails to state a claim under 42 U.S.C. § 1985(3) for conspiracy to
25 violate his equal protection rights. Plaintiff has not alleged facts indicating an equal protection violation,
26 and has not otherwise met the requirements of stating a conspiracy claim. Rather, Count II merely

1 repeats the allegations made in Count I of the amended complaint. As such, Count II is dismissed with
2 prejudice.

3 **Count III**

4 In Count III of the amended complaint, plaintiff alleges violation of his rights under the First,
5 Fifth, and Fourteenth Amendments to the Constitution. Plaintiff characterizes the constitutional
6 violations as retaliation and denial of access to the courts. Plaintiff alleges the following events: In May
7 2009, Deputy Attorney General Clark Leslie sought to discover who was assisting inmate Michael
8 Pacheco with pleadings in an unrelated lawsuit. (Am. Compl., at p. 9). Defendant Leslie contacted the
9 Northern Nevada Correctional Center and spoke with correctional officer Ramirez, who in turn
10 contacted the prison law library supervisor, who in turn contacted defendant Krabbenhoff, located in
11 Unit 2, C-Wing. (*Id.*, at pp. 9-10). Defendant Krabbenhoff searched plaintiff's cell and found legal
12 materials, including the files of inmate Michael Pacheco and other inmates. (*Id.*, at p. 10). These items
13 were turned over to investigator Fournier on May 29, 2009, and the items were returned on August 22,
14 2009. (*Id.*, at p. 10). Plaintiff alleges that these actions denied him access to the court. (*Id.*)

15 On June 15, 2009, defendant Krabbenhoff again searched plaintiff's cell and confiscated
16 plaintiff's documents, including legal research. (*Id.*, at p. 11). On September 23, 2009, a disciplinary
17 hearing was held with defendant Wiley. Plaintiff was found guilty of possessing the financial statement
18 of another inmate. (*Id.*, at p. 11). Plaintiff's penalty for the rule violation included loss of use of
19 personal appliances, such as a radio, night light, headphones, a compact disk, and personal clothing.
20 (*Id.*, at pp. 11-12).

21 First, it must be noted that a prisoner's legal assistance to other inmates deserves no more First
22 Amendment protection than any other prisoner speech. *Shaw v. Murphy*, 532 U.S. 223, 231-32 (2001).
23 Regarding plaintiff's allegation of denial of access to the courts, a prisoner alleging a violation of his
24 right of access to the courts must have suffered "actual injury." *Lewis v. Casey*, 518 U.S. 343, 349-50
25 (1996). The right to access the courts is limited to direct criminal appeals, habeas corpus proceedings,
26 and civil rights actions challenging conditions of confinement. *Id.* at 354-55. "The actual-injury

1 requirement mandates that an inmate “demonstrate that a nonfrivolous legal claim had been frustrated
2 or was being impeded.” *Id.* at 353. In the instant case, plaintiff was not engaged in a direct criminal
3 appeal, habeas corpus proceeding, or a civil rights action challenging plaintiff’s conditions of
4 confinement. Rather, plaintiff complains that the legal materials seized by prison staff were pleadings
5 of *other inmates*. Plaintiff fails to state a cognizable claim for denial of access to the courts. Finally,
6 plaintiff also fails to state a claim for retaliation, as he has not alleged a causal link between the exercise
7 of any protected activity and retaliatory behavior by any of the named defendants. *See Rizzo v. Dawson*,
8 778 F.2d 527, 532 (9th Cir. 1985); *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994); *Pratt v.*
9 *Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Plaintiff fails to state a viable retaliation or denial of access
10 to the courts claim against any defendant, and therefore, Count III will be dismissed with prejudice.

11 **III. Conclusion**

12 **IT IS THEREFORE ORDERED** that **Count I** of the amended complaint **SHALL PROCEED**
13 against defendants Karan Gedney, Marsha Jones, John Perry, Bruce Bannister, and Howard Skolnik.

14 **IT IS FURTHER ORDERED** that **Counts II and III** of the amended complaint are
15 **DISMISSED WITH PREJUDICE.**

16 **IT IS FURTHER ORDERED** that defendants Deputy Attorney General Clark Leslie and
17 correctional officers Rameriz, Fournier, Krabbenhoff, Wiley, Lewis, and Murvuia are **DISMISSED**
18 **WITH PREJUDICE.**

19 **IT IS FURTHER ORDERED** that plaintiff’s motion for exemption of copy cost fees (Docket
20 #15) is **DENIED.**

21 **IT IS FURTHER ORDERED** that plaintiff’s “motion for a filed copy of the complaint and 13
22 summons” (Docket #18) is **DENIED.**

23 **IT IS FURTHER ORDERED** that as to Count I of the amended complaint:

24 1. The Clerk shall electronically serve a copy of this order, including the attached Notice
25 of Intent to Proceed with Mediation form, along with a copy of plaintiff’s amended complaint, on
26 the Office of the Attorney General of the State of Nevada, to the attention of Pamela Sharp.

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2 Name _____

3 Prison Number _____

4 Address _____

5 _____

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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 _____,) Case No. _____
10 Plaintiff,)

11 v.) **NOTICE OF INTENT TO**
12) **PROCEED WITH MEDIATION**

13 _____)

14 _____)

15 Defendants.)

16 This case may be referred to the District of Nevada's early inmate mediation program. The
17 purpose of this notice is to assess the suitability of this case for mediation. Mediation is a process by
18 which the parties meet with an impartial court-appointed mediator in an effort to bring about an
19 expedient resolution that is satisfactory to all parties.

20 1. Do you wish to proceed to early mediation in this case? ____ Yes ____ No

21 2. If no, please state the reason(s) you do not wish to proceed with mediation? _____

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26 3. List any and all cases, including the case number, that plaintiff has filed in federal or state court
in the last five years and the nature of each case. (Attach additional pages if needed).

4. List any and all cases, including the case number, that are currently pending or any pending
grievances concerning issues or claims raised in this case. (Attach additional pages if needed).

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5. Are there any other comments you would like to express to the court about whether this case is suitable for mediation. You may include a brief statement as to why you believe this case is suitable for mediation. (Attach additional pages if needed).

This form shall be filed with the Clerk of the Court on or before thirty (30) days from the date of this order.

Counsel for defendants: By signing this form you are certifying to the court that you have consulted with a representative of the Nevada Department of Corrections concerning participation in mediation.

Dated this ____ day of _____, 20____.

Signature

Name of person who prepared or
helped prepare this document